

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**POLLOCK PLASTERING, INC.<sup>1</sup>**

**Employer**

**and**

**Case 7-RC-22437**

**LOCAL 9, INTERNATIONAL UNION OF BRICKLAYERS  
AND ALLIED CRAFTWORKERS, AFL-CIO<sup>2</sup>**

**Petitioner**

**and**

**LOCAL 67, OPERATIVE PLASTERERS' AND CEMENT  
MASONS' INTERNATIONAL ASSOCIATION OF THE  
UNITED STATES AND CANADA, AFL-CIO**

**Intervenor Local 67**

**and**

**LOCAL 16, OPERATIVE PLASTERERS' AND CEMENT  
MASONS' INTERNATIONAL ASSOCIATION OF THE  
UNITED STATES AND CANADA, AFL-CIO**

**Intervenor Local 16**

**APPEARANCES:**

John Adam, Attorney, of Southfield, Michigan, for the Petitioner.  
Eric Frankie, of Detroit, Michigan, for the Intervenors.

**DECISION AND DIRECTION OF ELECTION**

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<sup>1</sup> The name of the Employer appears as amended at the hearing. The Employer did not appear at the hearing.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding<sup>3</sup>, the undersigned finds:

1. The hearing officer's ruling made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved herein claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of approximately six full-time and regular part-time plasterers employed by the Employer working at or out of its facility located at 991 Secor Road, Temperance, Michigan; but excluding all carpenters, laborers, managers, guards, and supervisors as defined in the Act. Intervenor Local 16 asserts that it and the Employer are parties to a collective bargaining agreement signed by the parties on March 19 and 24, 2003, and effective from June 1, 2002 through May 31, 2004, which bars the instant petition. The Petitioner's contentions are four-fold: (1) there is no evidence of any signed contract between the Employer and Intervenor upon which to assert contract bar; (2) such contracts are Section 8(f) agreements, and therefore not a bar, based on Intervenor Local 16's failure to demonstrate majority status; (3) such contracts, even if signed, are an attempt to carve out very narrow geographical areas and as such cannot act as a bar; and (4) even if such contracts are found to act as a bar they would bar an election only in the geographical areas covered by the contracts.

I find that no contract bar exists because there is no evidence that Local 16 demonstrated majority support at the time it entered into its contract with the Employer.

The Washtenaw Contractors Association (WCA), is a multi-employer association formed for purposes of collective bargaining. The record indicates that the Employer is a

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<sup>3</sup> The parties filed briefs, which were carefully considered.

member of WCA and has delegated its authority to WCA to negotiate and sign collective bargaining agreements with the Petitioner. WCA and the Petitioner are presently parties to a Section 8(f) agreement effective by its terms from August 1, 2000 through July 31, 2003. This Section 8(f) agreement covers work performed in certain areas in the State of Michigan, including all of Washtenaw County and eight townships in Livingston County.<sup>4</sup> The Employer and the Petitioner have enjoyed a collective bargaining relationship since at least 1987.

The Employer and Intervenor Local 16 entered into a purported Section 9(a) collective bargaining agreement on about March 19, 2003, effective by its terms from June 1, 2000 through May 31, 2004, covering plastering work performed in the Lansing/Jackson area<sup>5</sup>. The parties' signature page of the agreement, absent the full agreement, was admitted into the record at the hearing.<sup>6</sup> Prior to this agreement, the Intervenor and Employer were parties to a Section 8(f) agreement from 1997 to 2000.

In March 2003, Intervenor Local 16 mailed a copy of the Lansing/Jackson Area Contractors agreement to the Employer requesting signature. Intervenor Local 16 did not at this or any other time enclose any authorization cards from a majority of the Employer's employees currently working at that time or presented any evidence to the Employer indicating that it represented a majority of the unit employees.

Intervenor Local 16 contends that its collective bargaining agreements with Lansing/Jackson Area Contractors and the Flint Area Contractors<sup>7</sup> dated 2002-2004 are Section 9(a) pacts that bar the instant petition. In the construction industry, parties may create a relationship pursuant to either Section 9(a) or Section 8(f) of the Act. In the absence of evidence to the contrary, the Board presumes that the parties intend their relationship to be governed by Section 8(f), rather than Section 9(a), and imposes the burden of proving the existence of a Section 9(a) relationship on the party asserting that such a relationship exists. *H.Y Floors & Gameline Painting*, 331 NLRB 304 (2000); *John Deklewa & Sons*, 282 NLRB 1375 (1987), *enfd. sub nom. Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), *cert. denied* 488 U.S. 889 (1988).

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<sup>4</sup> The eight townships are Unadilla, Putnam, Hamburg, Green Oak, Iosco, Marion, Genoa and Brighton Township (including the city of Brighton).

<sup>5</sup> The Lansing/Jackson area covers the counties of Jackson, Clinton, Eaton, and Ingham, and the northwestern portion of Livingston County, including the townships of Conway, Cohoctah, Handy, Howell, and the city of Howell. The Flint area covers the counties of Genesee and Shiawassee, and the northeastern portion of Livingston County, including Deerfield, Tyrone, Osceola, and Hartland Townships.

<sup>6</sup> The full agreement was entered into evidence in *Spray On, Inc.*, Case 7-RC-22435, which was heard on the same day. Intervenor Local 16 testimony at the hearing indicates that the signature page from the agreement it signed with the Employer is for the same agreement that was admitted into evidence in the *Spray On* case.

<sup>7</sup> The Lansing/Jackson Area Contractors agreement with Local 16 contains a "traveler" clause in Art. XII, Sec. 3, which Intervenor Local 16 argues subjects the Employer to the terms and conditions of the agreement between Flint Area Contractors and Local 16 regarding the Employer's employees when working in the Flint area.

To establish voluntary recognition in the construction industry pursuant to Section 9(a), the Board requires evidence (1) that the union unequivocally demanded recognition as the employees' Section 9(a) representative, and (2) that the employer unequivocally accepted it as such. *H.Y Floors & Gameline Painting*, 331 NLRB 304 (2000). The Board also requires a contemporaneous showing of majority support by the union at the time Section 9(a) recognition is granted. *Golden West Electric*, 307 NLRB 1494, 1495 (1992). However, as to this contemporaneous showing, the Board has held that an employer's acknowledgment of such support is sufficient to preclude a challenge to majority status by an employer. *H.Y Floors & Gameline Painting*, supra; *Oklahoma Installation Co.*, 325 NLRB 741 (1998). If majority status is challenged within a reasonable time by the filing of a petition, and majority status is not shown, the relationship will not be a valid Section 9(a) relationship for the purpose of contract bar. *Casale Industries*, 311 NLRB 951, 952-953 (1993).

In this matter, I find that the evidence presented at the hearing is insufficient to show that Intervenor Local 16 is the Section 9(a) representative of Lansing/Jackson Area Contractors plasterers, including the employees of the Employer, for the purpose of contract bar. In March 2003, Intervenor Local 16 merely mailed a copy of the Lansing/Jackson Area Contractors agreement to the Employer requesting signature. Intervenor Local 16 did not at that time demonstrate majority status. Thus, there is insufficient evidence that Intervenor Local 16 unequivocally demanded Section 9(a) recognition from the Employer and represented a majority of its plasterers.<sup>8</sup>

5. Based on the foregoing reasons, and the record as a whole, I find that the following employees constitute an appropriate unit of employees for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time plasterers employed by the Employer working at or out of its facility located at 991 Secor Road, Temperance, Michigan; but excluding all carpenters, laborers, managers, guards, and supervisors as defined in the Act.

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<sup>8</sup> Having found there is no contract bar, I find it unnecessary to address additional arguments asserted by the Petitioner regarding the purported collective bargaining agreements.

Those eligible to vote shall vote as set forth in the attached Direction of Election.<sup>9</sup>

Dated at Detroit, Michigan, this 7<sup>th</sup> day of May 2003.

(SEAL)

/s/ Joseph A. Barker  
Joseph A. Barker  
Acting Regional Director  
National Labor Relations Board  
Patrick V. McNamara Federal Building  
477 Michigan Avenue –Room 300  
Detroit, Michigan 48226

Classification

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<sup>9</sup> Although Intervenor Local 67 was served with a notice of the representation hearing because it was listed on the petition as having a representative interest in this proceeding, as it is not the current bargaining representative, and as there is no showing of interest with respect to Local 67 in this case, Local 67 will not appear on the ballot.